

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 10.7.101,	)	
10.7.109, 10.7.110, 10.7.111,	)	
10.7.115, 10.7.118, 10.10.202,	)	
10.10.309, 10.10.316,	)	
10.10.320, 10.10.611,	)	
10.10.614, 10.15.101,	)	
10.20.102, 10.20.106,	)	
10.21.101B, 10.21.101C,	)	
10.21.101F, 10.21.101I,	)	
10.21.102A, 10.21.102B,	)	
10.21.102E, 10.22.102,	)	
10.23.102, 10.30.102, and	)	
10.30.403 relating to school	)	
finance and transportation	)	

TO: All Concerned Persons

1. On June 3, 2004, the Superintendent of Public Instruction published MAR Notice No. 10-7-111 regarding the public hearing on the proposed amendment of the above-stated rules concerning school finance and transportation at page 1255 of the 2004 Montana Administrative Register, Issue Number 11.

2. The Superintendent of Public Instruction has amended the following rules exactly as proposed:

ARM 10.7.101	INTRODUCTION
10.7.109	BUS TRANSPORTATION REIMBURSEMENT — SCHOOL DISTRICT APPLICATION TR-1 FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT
10.7.110	STANDARDS FOR SCHOOL BUSES
10.7.111	QUALIFICATION OF BUS DRIVERS
10.7.115	SCHEDULE FOR BUS TRANSPORTATION
10.7.118	SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER
10.10.202	MONTHLY TRANSFERS TO EQUAL WARRANTS ISSUED PLUS UNREMITTED PAYROLL LIABILITIES
10.10.309	DISTRIBUTION AND REAPPROPRIATION OF COUNTYWIDE FUNDS
10.10.316	DISTRICT RETIREMENT FUND
10.10.611	ESTABLISHMENT OF INVESTMENT ACCOUNTS
10.10.614	PAYMENTS INTO AN INVESTMENT ACCOUNT
10.15.101	DEFINITIONS
10.20.102	CALCULATION OF AVERAGE NUMBER BELONGING (ANB)
10.20.106	STUDENTS PLACED IN EDUCATION PROGRAMS
10.21.101B	CALCULATION OF STATEWIDE GTBA
10.21.101C	NOTIFICATION OF MILL VALUES PER ANB AND GTB RATIOS
10.21.101F	CALCULATION OF GENERAL FUND GTBA TO

	QUALIFYING DISTRICTS
10.21.101I	SCHOOL FACILITY ADVANCES AND REIMBURSEMENTS
10.21.102A	GTBA ON GENERAL FUND AND RETIREMENT MILLS AND SCHOOL FACILITY ADVANCE AND REIMBURSEMENT
10.21.102B	CALCULATION OF COUNTY MILL VALUES PER ANB
10.21.102E	CALCULATION OF GTBA TO QUALIFYING COUNTIES
10.22.102	GENERAL FUND SPENDING LIMITS
10.23.102	FUNDING THE BASE BUDGET LEVY
10.30.102	APPROVAL CRITERIA
10.30.403	TRANSITION TO K-12 DISTRICTS

3. The Superintendent of Public Instruction has amended the following rule with the following changes, stricken matter interlined, new matter underlined:

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(f) remain as proposed.

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in ~~(5)~~(4); and

(h) through (3) remain as proposed.

~~(4) Pursuant to 20-9-208, MCA, trustees shall not transfer cash into or out of the general fund except as otherwise specifically provided by law. Trustees shall not transfer cash from the compensated absences fund, which is funded using general fund transfers authorized by law, to any fund other than the general fund.~~

(5) through (7) remain as proposed but are renumbered (4) through (6).

~~(8) Pursuant to 20-10-145 and 20-10-146, MCA, state and county transportation aid is a reimbursement for expenditures paid from the district transportation fund and, as such, is not available for transfer to any other fund of the district.~~

(9) through (13) remain as proposed but are renumbered (7) through (11).

4. The Superintendent of Public Instruction has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and the Superintendent's responses:

COMMENT 1: A comment was received questioning the bus reimbursement language in the proposed amendments and objected to one bus ridership count date being used.

RESPONSE 1: The commentor's opinion is noted, but is based on an incorrect assumption. SB 424 required that a bus be reimbursed for each mile traveled on an approved route for the actual days traveled, up to 180 school days. Ridership is no longer a factor in the reimbursement rate. This means pupils

who ride a bus will not be counted during the year and the ridership does not impact the amount of payment for a bus route in any way.

COMMENT 2: A comment was received regarding ARM 10.10.316 stating that "to the extent county taxpayers were originally overcharged, that overcharge should be refunded to the county taxpayers."

RESPONSE 2: The commentor's opinion is noted, but is based on an incorrect assumption. The method of repayment proposed in ARM 10.10.316 would refund the money to the county taxpayers. By repaying the retirement fund using other district money, the district would have funds available and would therefore reduce the amount charged in the next year to the county taxpayers. By lowering the next year's levy, the offset will appropriately apply the "refund" to the county taxpayers, who were originally overcharged.

COMMENT 3: A comment was received objecting to the definition of average daily attendance and one count date being used to determine funding. The commentor suggested waiting on the outcome of the state school funding lawsuit before amending the rule.

RESPONSE 3: The commentor's opinion is noted, but is based on the incorrect assumption that funding is based on the attendance on certain count dates. Funding is based on enrollment on count dates which are prescribed by state law. Absence on a count date does not affect funding, i.e., if a student is enrolled on the count date, he is counted even though he may be absent from school that day.

COMMENT 4: A comment was received regarding ARM 10.15.101 stating that the amended language was fine as long as it included individualized education programs (IEPs) for gifted and talented students in the same manner as special education students.

RESPONSE 4: The commentor's opinion is noted, however the term individualized education program (IEP) is defined by federal law to include students with disabilities as defined in the Individuals with Disabilities Education Act (IDEA). Administrative rules cannot expand on this definition to include gifted and talented students.

COMMENT 5: A comment was received questioning why a district cannot include students placed in private, nonsectarian day treatment programs for purposes of calculating ANB. The commentor was concerned that this amendment would discourage alternative schools.

RESPONSE 5: Day treatment is a special education related service. The state funding for students placed in private day

treatment programs is contained in 20-5-324, MCA. This law provides a year-end state payment to a district for a resident pupil placed by trustees in a private day treatment program. The law requires the payment be used by the district to pay tuition to the private facility for the day treatment services. Therefore, the student is omitted from ANB counts to avoid duplication of state funding. This rule does not limit the ability of public schools to provide alternative education programs to address individual student needs.

COMMENT 6: A comment was received questioning why students placed in regional detention centers are not counted as "enrolled" for ANB funding.

RESPONSE 6: State law places the responsibility for providing education at youth detention centers on the counties that run those centers. The law does not make a provision for state funding for students being educated in the youth detention facilities. This cannot be changed by administrative rule.

COMMENT 7: A comment was received in favor of the amendments to ARM 10.30.403.

RESPONSE 7: The State Superintendent thanks commentor for her comments.

COMMENT 8: Four written comments were received regarding ARM 10.10.320(4) and (8) including comments from the Montana School Boards Association and the Montana Rural Education Association objecting to the restriction on transfers from the district transportation and compensated absences funds.

RESPONSE 8: The State Superintendent thanks the commentors for their comments and has determined that this issue should be resolved by the legislature. The State Superintendent has deleted these amendments.

/s/ Linda McCulloch  
Linda McCulloch  
Superintendent of Public Instruction

/s/ Catherine K. Warhank  
Catherine K. Warhank  
Rule Reviewer

Certified to the Secretary of State July 12, 2004.